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| APPLICATION NO.           | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------------|-------------|----------------------|---------------------|------------------|
| 10/764,113                | 01/24/2004  | Richard A. DeVerse   | PSS 209 US 1        | 7869             |
| 24972                     | 7590        | 02/08/2006           | EXAMINER            |                  |
| FULBRIGHT & JAWORSKI, LLP |             |                      | LU, TONY W          |                  |
| 666 FIFTH AVE             |             |                      | ART UNIT            | PAPER NUMBER     |
| NEW YORK, NY 10103-3198   |             |                      | 2878                |                  |

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/764,113             | DEVERSE ET AL.      |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Tony Lu                | 2878                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 1/24/2004 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because figures 65-92 have hand written figure numbers. Applicant is advised to employ the services of a competent patent draftsperson outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 3 is rejected under 35 U.S.C. 102(b) as being anticipated by Garner et al US6337472.

With respect to claim 3, Garner et al disclose a light imaging system comprising: means for collecting hyperspectral databasecubes(camera, read col.5, lines 60-65); means for building spectrometric models(32, software, read col.16-17); tunable light source means(argon laser, read col.14 lines 30-50); means for illuminating one or more objects with energy-weighted spectral bands that relate to spectrometric models(22);

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and means for measuring the energy(camera,25 or 30) resulting from illumination by said means for illuminating.

Garner et al's system inherently performs the claim method steps of claim 1 as it discloses all the limitations set forth in the method steps.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garner et al US6337472 in view of Messerschmidt US5828066.

With respect to claim 4, per the above discussion, Garner et al fails to disclose the tunable light source comprises a spatial light modulator.

Messerschmidt discloses a multisource infrared spectrometer system having a light source(1) comprises a spatial light modulator(9).

It would have been obvious to one of the ordinary skill in the art at the time of the invention to modify Garner et al by supplying a spatial light modulator taught by Messerschmidt in order to provide more control to the light modulation of the light source.

The proposed system of Garner et al and Messerschmidt inherently performs the claim method steps in claim 2 as it disclose all the limitations set forth in the claim 2.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1) Freeman et al US6640132 disclose a forensic hyperspectral apparatus and method including an image acquisition interface, a display monitor, and a detector.

2) Strobl et al US5303026 disclose a spectroscopic analysis system include a tunable light source.

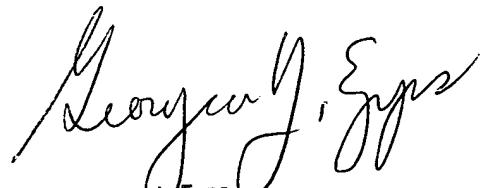
3) Stafford US 5504575 discloses a SLM spectrometer including a spatial light modulator for modulating the light source.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony Lu whose telephone number is 5712728448. The examiner can normally be reached on M-F 9:00am- 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Georgia Epps can be reached on 5712722328. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Georgia Epps  
Supervisory Patent Examiner  
Technology Center 2800